

## ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is entered into as of April \_\_, 1995, by and among America Online, Inc., a Delaware corporation ("AOL"), Wide Area Information Servers, a California corporation ("WAIS"), Brewster Kahle, as representative of the Holders (as hereinafter defined) of WAIS stock (the "Representative"), and [Nationsbank] as "Escrow Agent".

### RECITALS

A. WAIS, AOL and AOL Acquisition Corp., a California corporation and wholly-owned subsidiary of AOL ("Sub"), have entered into an Agreement and Plan of Reorganization, dated as of April \_\_, 1995 (the "Plan"), pursuant to which Sub will merge with and into WAIS, with WAIS surviving the Merger. The capitalized terms used in this Agreement and not otherwise defined herein will have the meanings given them in the Plan.

B. Pursuant to the Plan, an aggregate of \_\_\_\_\_ shares of AOL Common Stock are to be issued to the WAIS shareholders as listed on Exhibit A attached hereto.

C. The Plan provides for shares equaling ten percent (10%) of the shares of AOL Common Stock that are issued in the Merger to the WAIS Shareholders (the "Escrow Shares") to be deducted from the shares of AOL Common Stock issued to such WAIS shareholders (collectively the "Holders") and be placed in an escrow account (the "Escrow Account") to secure certain indemnification obligations of the Holders to AOL, Sub and other Indemnified Persons under the Plan on the terms and conditions set forth herein. The Escrow Shares required to be deposited in the Escrow Account pursuant to this Agreement by Holders are shown on Exhibit A attached hereto.

D. The parties hereto desire to establish the terms and conditions pursuant to which the Escrow Shares will be deposited, held in, and disbursed from the Escrow Account.

NOW, THEREFORE, the parties hereto hereby agree as follows:

#### **1. Escrow and Indemnification**

(a) Escrow of Shares. Promptly after the Effective Time, [AOL TO IDENTIFY EXCHANGE AGENT], as Exchange Agent, will deposit the Escrow Shares deducted from the shares issued to the Holders in the Merger with the Escrow Agent, who will hold them in escrow as collateral for the indemnification obligations of the Holders under Section 10.2 of the Plan until AOL is required to release such Escrow Shares pursuant to the terms of this Agreement. The Escrow Shares will include "Additional Escrow Shares" as that term is defined in Section 2(b) of this Agreement. The Escrow Agent agrees to accept delivery of the Escrow Shares and to hold such Escrow Shares in escrow subject to the terms and conditions of this Agreement.

(b) Indemnification. Subject to the limitations set forth in this Section 1(b), the Holders will indemnify and hold harmless AOL, Sub and its respective officers, directors, agents and employees, and each person, if any, who controls or may control AOL or Sub within the meaning of the Securities Act (hereinafter referred to individually as an "Indemnified Person" and collectively as "Indemnified Persons") from and against any and all losses, costs, damages, liabilities and expenses arising from claims, demands, actions, causes of action, including, without limitation, reasonable legal fees, net of any recoveries under existing insurance policies, or indemnities from third parties or tax benefits to AOL resulting from such damage and known to AOL at the time of making a claim under the Escrow (hereinafter referred to as "Damages") arising out of any misrepresentation or breach of or default in connection with any of the representations, warranties and covenants given or made by WAIS in this Agreement, the Plan, the WAIS Schedules (as defined in the Plan) or any exhibit attached to the Plan. The indemnification provided for in this Section 1(b) and Section 10.2 of the Plan shall not apply unless and until the aggregate Damages for which one or more Indemnified Persons seeks indemnification under this section exceeds \$25,000 (the "Basket"), in which event the indemnification shall include all Damages (including the Basket). AOL will use its best efforts to obtain recoveries under all applicable insurance policies for all Damages. (For purposes of this Agreement, references to AOL will include all other Indemnified Persons, as applicable.) The Escrow Shares will be security for this indemnity obligation, subject to the limitations, and in the manner provided, in this Agreement. Promptly after the receipt by AOL of notice or discovery of any claim, damage or legal action or proceeding giving rise to indemnification rights under the Plan, AOL will give the Representative and the Escrow Agent written notice of such claim, damage, legal action or proceeding (a "Claim") in accordance with Section 3 hereof. Within the earlier of thirty (30) days of such written notice or ten (10) days before an answer must be filed with the court respecting the Claim, the Representative may, at the expense of the Holders, elect to take all necessary steps properly to contest any Claim involving third parties or to prosecute such Claim to conclusion. If the Representative makes the foregoing election, AOL will have the right to participate at its own expense in all proceedings. If the Representative does not make such election, AOL shall be free to handle the prosecution or defense of any such Claim and will notify the Representative of the progress of any such Claim, will permit the Representative, at the sole cost of the Holders, to participate in such prosecution or defense and will provide the Representative with reasonable access to all relevant information and documentation relating to the Claim and AOL's prosecution or defense thereof. In any case, the party not in control of the Claim will cooperate with the other party in the conduct of the prosecution or defense of such Claim. Neither party will compromise or settle any such Claim without the written consent of either AOL (if the Representative defends the Claim) or the Representative (if AOL defends the Claim), such consent not to be unreasonably withheld.

## 2. Deposit of Escrow Shares; Release from Escrow.

(a) Delivery of Escrow Shares. On the Closing Date, the Escrow Shares allocable to the Holders (the "Initial Escrow Shares") will be delivered by AOL's Exchange Agent to the Escrow Agent in the form of duly authorized stock certificates issued in the respective names of the holders thereof. In the event AOL issues any Additional Escrow Shares (as defined below), such shares will be issued and delivered to the Escrow Agent in the same manner as the Initial Escrow Shares delivered on the Closing Date.

(b) Dividends, Voting and Rights of Ownership. [Except for tax-free dividends paid in stock declared with respect to the Escrow Shares pursuant to Section 305(a) of the Code ("Additional Escrow Shares"),] any cash dividends, dividends payable in securities or other distributions of any kind made in respect of the Escrow Shares will be distributed currently by AOL to the Holders on a pro rata basis. Each Holder will have the right to vote the Escrow Shares deposited in the Escrow Account for the account of such Holder so long as such Escrow Shares are held in escrow, and AOL will take all steps necessary to allow the exercise of such rights. While the Escrow Shares remain in the Escrow Agent's possession pursuant to this Agreement, the Holders will retain and will be able to exercise all other incidents of ownership of said Escrow Shares that are not inconsistent with the terms and conditions hereof.

(c) Distribution to Holders. As soon as reasonably possible, but in no event later than within five (5) business days after the later of (i) the first anniversary of the Closing Date and (ii) the date that AOL issues its press release summarizing the audited financial results for its year ending June 30, 1995 (the "Final Release Date"), the Escrow Agent will release from escrow to the Holders their respective Escrow Shares, plus all Additional Escrow Shares, less (A) any Escrow Shares delivered to AOL in accordance with Section 4 hereof in satisfaction of Claims by AOL and (B) any Escrow Shares subject to delivery to AOL in accordance with Section 4 hereof with respect to any then pending but unresolved Claims of AOL. Any Escrow Shares held as a result of clause (B) will be released to the Holders or released to AOL for cancellation (as appropriate) promptly upon resolution of each specific Claim involved. AOL will deliver written notice to the Representative of publication referred to in this Section 2(c) concurrently with its publication. [SUBJECT TO ACCOUNTANT REVIEW]

(d) Release of Shares. The Escrow Shares will be held by Escrow Agent until required to be released pursuant to Section 2(c) above. As soon as possible, but in no event later than five (5) business days after the release condition is met, Escrow Agent will deliver to each Holder the requisite number of Escrow Shares to be released on such date as identified by AOL and Representative to the Escrow Agent in writing. Such delivery will be in the form of stock certificate(s) issued in the name of such Holder. AOL and Representative undertake to deliver a timely notice to Escrow Agent identifying the number of Escrow Shares to be released within such five-day period. Escrow Shares will be released to the respective Holders in proportion to their respective interests as set forth in Exhibit A, as revised immediately prior to the Final Release Date. AOL will take such action as may be necessary to cause stock certificates to be issued in the names of the appropriate Holders. Certificates representing Escrow Shares held for the accounts of Holders who were affiliates of WAIS on the date of the Plan or thereafter will bear a legend indicating that they are subject to resale restrictions under Rule 145 (for Holders who were WAIS affiliates). Cash will be paid in lieu of fractions of Escrow Shares in an amount equal to the product determined by multiplying such fraction by the closing sale price of AOL Common Stock as quoted on the Nasdaq National Market and as reported in The Wall Street Journal as of the Closing Date (as defined in the Plan) (such closing price being hereafter referred to as the "Closing Price"). Within five (5) business days after written request from the Holder, AOL will submit a certified schedule of the cash amounts payable for fractional shares and will deposit with Escrow Agent sufficient funds to pay such cash amounts for fractional shares.

(e) No Encumbrance. No Escrow Shares or any beneficial interest therein may be pledged, sold, assigned or transferred, including by operation of law, by a Holder or be taken or reached by any legal or equitable process in satisfaction of any debt or other liability of a Holder (other than such Holder's obligations under Section 10.2 of the Plan or under this Agreement), prior to the delivery to such Holder of the Escrow Shares by the Escrow Agent.

(f) Power to Transfer Escrow Shares. The Escrow Agent is hereby granted the power to effect any transfer of Escrow Shares contemplated by this Agreement. AOL will cooperate with the Escrow Agent in promptly issuing stock certificates to effect such transfers.

### 3. Notice of Claim.

(a) Each notice of a Claim by AOL (the "Notice of Claim") will be in writing, will be delivered on or before the Final Release Date, and will contain the following information to the extent it is reasonably available to AOL:

(i) AOL's good faith estimate of the reasonably foreseeable maximum amount of the alleged Damages (which amount may be revised by AOL at any time prior to the Final Release Date); and

(ii) A brief description in reasonable detail of the facts, circumstances or events giving rise to the alleged Damages based on AOL's good faith belief thereof, including, without limitation, the identity and address of any third-party claimant (to the extent reasonably available to AOL) and copies of any formal demand or complaint.

(b) The Escrow Agent will not transfer any of the Escrow Shares held in the Escrow Account to AOL pursuant to a Notice of Claim until such Notice of Claim has been resolved in accordance with Section 4 below.

4. Resolution of Notice of Claim and Transfer of Escrow Shares. Any Notice of Claim received by the Representative and the Escrow Agent pursuant to Section 3 above will be resolved as follows:

(a) Uncontested Claims. In the event that the Representative does not contest a Notice of Claim in writing to the Escrow Agent and AOL and does not pay the amount demanded within 30 calendar days after a Notice of Claim containing a statement of the claimed Damages is delivered pursuant to Section 7 below, the Escrow Agent will, at the Final Release Date, transfer to AOL for cancellation that number of Escrow Shares having a value (determined pursuant to Section 4(c) hereof) equal to the amount of Damages specified in the Notice of Claim and notify the Representative of such transfer.

(b) Contested Claims. In the event that the Representative gives written notice contesting all or a portion of a Notice of Claim to AOL and the Escrow Agent (a "Contested Claim") within the 30-day period provided above, matters that are subject to third party claims brought against AOL, Sub or WAIS in a litigation or arbitration will await the final decision, award or settlement of such litigation or arbitration.

(c) Determination of Amount of Claims. Any amount owed to AOL hereunder, determined pursuant to Section 4(a) or (b) above, will be immediately payable to AOL out of the Escrow Shares then held by the Escrow Agent at a per share value for all Escrow Shares equal to the Closing Price of AOL Common Stock (i.e., \$\_\_\_\_ per share).

(d) No Exhaustion of Remedies. AOL need not exhaust any other remedies that may be available to it but shall proceed directly in accordance with the provisions of this Agreement. AOL may institute Claims against the Escrow Shares and in satisfaction thereof may recover Escrow Shares, in accordance with the terms of this Agreement, without making any other Claims directly against Holders and without rescinding or attempting to rescind the transactions consummated pursuant to the Plan. The assertion of any single Claim for indemnification hereunder will not bar AOL from asserting other Claims hereunder.

## 5. Limitation of Escrow Agent's Liability.

(a) The Escrow Agent will incur no liability with respect to any action taken or suffered by it in reliance upon any notice, direction, instruction, consent, statement or other document believed by it to be genuine and duly authorized, nor for any other action or inaction, except its own willful misconduct or negligence. The Escrow Agent will not be responsible for the validity or sufficiency of this Agreement. In all questions arising under this Agreement, the Escrow Agent may rely on the advice of counsel, and for anything done, omitted or suffered in good faith by the Escrow Agent based on such advice, the Escrow Agent will not be liable to anyone. The Escrow Agent will not be required to take any action hereunder involving any expense unless the payment of such expense is made or provided for in a manner satisfactory to it.

(b) In the event conflicting demands are made or conflicting notices are served upon the Escrow Agent with respect to the Escrow Account, the Escrow Agent will have the absolute right, at the Escrow Agent's election, to do either or both of the following: (i) resign so a successor can be appointed pursuant to Section 10 hereof or (ii) file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring the parties to interplead and litigate in such court their several claims and rights among themselves. In the event such interpleader suit is brought, the Escrow Agent will thereby be fully released and discharged from all further obligations imposed upon it under this Agreement, and AOL will pay the Escrow Agent (subject to reimbursement from the Holders pursuant to Section 9 hereof) all costs, expenses and reasonable attorney's fees expended or incurred by the Escrow Agent pursuant to the exercise of Escrow Agent's rights under this Section 5 (such costs, fees and expenses will be treated as extraordinary fees and expenses for the purposes of Section 9 hereof).

(c) Each other party hereto, jointly and severally (each an "Indemnifying Party" and together the "Indemnifying Parties"), hereby covenants and agrees to reimburse, indemnify and hold harmless Escrow Agent, Escrow Agent's employees and agents (severally and collectively, "Escrow Agent"), from and against any loss, damage, liability or loss suffered, incurred by, or asserted against Escrow Agent (including amounts paid in settlement of any action, suit, proceeding, or claim brought or threatened to be brought and including reasonable expenses of legal counsel) arising out of, in connection with or based upon any act or omission by Escrow Agent relating in any way to this Agreement or Escrow Agent's services

hereunder. This indemnity shall exclude negligence, gross negligence or willful misconduct on Escrow Agent's part.

(d) Each Indemnifying Party may participate at its own expense in the defense of any claim or action that may be asserted against Escrow Agent, and if the Indemnifying Parties so elect, the Indemnifying Parties may assume the defense of such claim or action; provided, however, that if there exists a conflict of interest that would make it inappropriate for the same counsel to represent both Escrow Agent and the Indemnifying Parties, Escrow Agent's retention of separate counsel shall be reimbursable as herein above provided. Escrow Agent's right to indemnification hereunder shall survive Escrow Agent's resignation or removal as Escrow Agent and shall survive the termination of this Agreement by lapse of time or otherwise.

(e) Escrow Agent hereby warrants that Escrow Agent will notify each Indemnifying Party by letter, or by telephone or facsimile confirmed by letter, of any receipt by Escrow Agent of a written assertion of a claim against Escrow Agent, or any action commenced against Escrow Agent, within ten (10) business days after Escrow Agent's receipt of written notice of such claim. However, Escrow Agent's failure to so notify each Indemnifying Party shall not operate in any manner whatsoever to relieve an Indemnifying Party from any liability that it may have otherwise than on account of this Section 5.

**6. Holders' Representative.** For purposes of this Agreement, the Holders have consented to the appointment of the Representative, as representative of the Holders, and as the attorney-in-fact for and on behalf of each Holder, and, subject to the express limitations set forth below, the taking by the Representative of any and all actions and the making of any decisions required or permitted to be taken by him under this Agreement, including, without limitation, the exercise of the power to (i) authorize delivery to AOL of the Escrow Shares, or any portion thereof, in satisfaction of Claims, (ii) agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such Claims, (iii) resolve any Claims and (iv) take all actions necessary in the judgment of the Representative for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement. The Representative will have unlimited authority and power to act on behalf of each Holder with respect to this Agreement and the disposition, settlement or other handling of all Claims, rights or obligations arising under this Agreement so long as all Holders are treated in the same manner. The Holders will be bound by all actions taken by the Representative in connection with this Agreement, and AOL will be entitled to rely on any action or decision of the Representative. In performing his functions hereunder, the Representative will not be liable to the Holders in the absence of gross negligence or willful misconduct. The Representative may resign from such position, effective upon a new representative being appointed in writing by Holders who beneficially own a majority of the Escrow Shares (including as beneficially owned any Option Shares attributable to any Holder).

**7. Notices.** All notices, instructions and other communications required or permitted to be given hereunder or necessary or convenient in connection herewith must be in writing and will be deemed delivered (i) when personally served or when delivered by telex or facsimile (to the telex or facsimile number of the person to whom the notice is given), (ii) the first business day following the date of deposit with an overnight courier service or (iii) on the

earlier of actual receipt or the third business day following the date on which the notice is deposited in the United States mail, first class registered or certified, postage prepaid, addressed as follows:

If to the Escrow Agent: [Nationsbank]  
[ADDRESS TO COME]

If to AOL: America Online, Inc.  
8619 Westwood Center Drive  
Vienna, VA 22182  
Attn: Ellen Kirsh, Esq., General Counsel

With a copy to: Fenwick & West  
Two Palo Alto, Square  
Palo Alto, California 94306  
Attn: Mark C. Stevens, Esq.

If to the Representative: Brewster Kahle  
c/o Wide Area Information Servers, Inc.  
690 Fifth Street  
San Francisco, California 94107

With a copy to: Wilson, Sonsini, Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Allen Morgan, Esq.

or to such other address as AOL, the Representative or the Escrow Agent, as the case may be, designates in a writing delivered to each of the other parties hereto.

## 8. General.

(a) Governing Law, Assigns. This Agreement will be governed by and construed in accordance with the internal laws of the State of California without regard to conflict-of-law principles and will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(c) Entire Agreement. Except as otherwise set forth in the Plan and the Agreement of Merger, this Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior

agreements or understandings, written or oral, between the parties with respect to the subject matter hereof.

(d) Waivers. No waiver by any party hereto of any condition or of any breach of any provision of this Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained herein.

**9. Expenses.**

(a) Escrow Agent. All fees and expenses of the Escrow Agent incurred in the ordinary course of performing its responsibilities hereunder will be paid by AOL upon receipt of a written invoice by Escrow Agent. Any extraordinary fees and expenses, including without limitation any fees or expenses incurred by the Escrow Agent in connection with a dispute over the distribution of Escrow Shares or the validity of a Notice of Claim, will be paid 50% by AOL and 50% by the Holders. The Holders' liability for the fees and expenses of the Escrow Agent (which will be pro rata for each Holder based on the proportion of the total Escrow Shares attributable to such Holder) may be paid by AOL and recovered as a Claim hereunder out of the Escrow Shares so long as aggregate Claims exceed the WAIS Basket designated in the Plan.

(b) Representative. The Representative will not be entitled to receive any compensation from AOL or the Holders in connection with this Agreement. Any out-of-pocket costs and expenses reasonably incurred by the Representative in connection with actions taken pursuant to the terms of this Agreement will be paid by the Holders to the Representative in proportion to their percentage interests in the Escrow Shares set forth on Exhibit A.

**10. Successor Escrow Agent.** In the event the Escrow Agent becomes unavailable or unwilling to continue in its capacity herewith, the Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice of its resignation to the parties to this Agreement, specifying a date not less than ten (10) days' following such notice date of when such resignation will take effect. AOL will designate a successor Escrow Agent prior to the expiration of such ten-day period by giving written notice to the Escrow Agent and the Representative. AOL may appoint a successor Escrow Agent without the consent of the Holders or the Representative [so long as such successor is a bank with assets of at least \$50 million][AOL TO CONFIRM], and may appoint any other successor Escrow Agent with the consent of the Representative, which will not be unreasonably withheld. The Escrow Agent will promptly transfer the Escrow Shares to such designated successor.

**11. Limitation of Responsibility.** The Escrow Agent's duties are limited to those set forth in this Agreement, and Escrow Agent, acting as such under this Agreement, is not charged with knowledge of or any duties or responsibilities under any other document or agreement, including without limitation the Plan. Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through its agents or attorneys. Nothing in this Escrow Agreement shall be deemed to impose upon the Escrow Agent any duty to qualify to do business or to act as a fiduciary or otherwise in any

jurisdiction other than the jurisdiction where it is organized, which is \_\_\_\_\_.  
Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Escrow Agreement or of any agreement amendatory or supplemental hereto.

**12. Amendment.** This Agreement may be amended by the written agreement of AOL, the Escrow Agent and the Representative; provided that, if the Escrow Agent does not agree to an amendment agreed upon by AOL and the Representative, the Escrow Agent will resign and AOL will appoint a successor Escrow Agent in accordance with Section 10 above. No such amendment may treat any one Holder differently from the other Holders unless consented to in writing by Holders having beneficial ownership in a majority of the outstanding Escrow Shares, including the consent of any Holder who is to be treated differently.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

**AMERICA ONLINE INC.**

**REPRESENTATIVE**

By: \_\_\_\_\_

Name:

Title:

**ESCROW AGENT**

[NATIONSBANK]

By: \_\_\_\_\_

Authorized Signatory

By: \_\_\_\_\_

Brewster Kahle, individually

**WIDE AREA INFORMATION  
SERVERS, INC.**

By: \_\_\_\_\_

Brewster Kahle  
President

[SIGNATURE PAGE TO  
ESCROW AGREEMENT]

## Escrow Agreement

### Exhibit A

CONVERSION OF  
WIDE AREA INFORMATION SERVERS, INC. ("WAIS")  
CAPITAL STOCK  
(With information provided as of April \_\_, 1995)  
INTO AMERICA ONLINE, INC. ("AOL")  
(Conversion Ratio: [TO COME])

WAIS Shareholder Name	Number of WAIS Shares Represented by Certificate	WAIS Shareholder Holdings of AOL shares without fractional remainders	Post-Conversion WAIS Shareholder AOL Escrow Shares (With escrow of 10%)	AOL Shares Issuable at Closing to WAIS Shareholders
Brewster Kahle	7,500,000	[TO COME]	[TO COME]	[TO COME]
WS Investment Co. 95A	22,500	[TO COME]	[TO COME]	[TO COME]
Allen L. Morgan	2,500	[TO COME]	[TO COME]	[TO COME]